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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,930	12/11/2003	Clemens Rickert	09210-US	8586

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EXAMINER

MAMMEN, NATHAN SCOTT

ART UNIT PAPER NUMBER

3671

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/733,930

Applicant(s)

RICKERT ET AL.

Examiner

Nathan S Mammen

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/6/04; 12/11/03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-6, 8 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of copending Application No. 10/733,548. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims defines a picking unit having a picking gap, two gathering/conveying elements, and a picking unit.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3671

4. Claims 1-6, 9, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,916,113 to Johnson.

The Johnson '113 patent discloses a gathering and picking device. The gathering and picking device comprises a picking gap defined by stripper plates (94), the picking gap having an inlet (A) for receiving standing plants. A gathering element (Fig. 3, first conveying element 33 on right side of line 43) is arranged to the first side of the picking gap and is rotated about a vertical axis. The gathering element has carrier elements (64) for grasping the standing plants. A conveying element (Fig. 3, first conveying element 33 on left side of line 43) is arranged on the second side of the picking gap. A picking unit (96) is provided for conveying the standing plants downwardly through the gap.

Regarding claims 2-6, 8, 9, 15: The conveying element is provided with protruding teeth-like carrier elements (64). The carrier elements are distributed circumferentially over a disk. The teeth form pocket-like recesses. The picking unit comprises a picking roll (96) which inherently has a point and which is arranged beneath the inlet of the picking gap (see Fig. 5). The operating envelopes of the gathering and conveying elements overlap (i.e., both cross the centerline 43 – see Fig. 3). The conveying element is operated at the same speed as the gathering element (see Fig. 3 – drive arrangement 56). The conveying element (33) is arranged above the picking gap (see Fig. 5). The operating envelope of the conveying element terminates approximately at the inlet of the picking gap.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3671

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,916,113 to Johnson.

The Johnson '113 patent discloses the claimed invention, as stated above, except for the speed of rotation of the conveying unit being faster than the speed of rotation of the gathering unit. It would have been an obvious matter of design choice for one having ordinary skill in the art at the time the invention was made to provide the conveying unit for rotating faster than the gathering unit.

7. Claims 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,916,113 to Johnson in view of U.S. Patent Application Pub. No. 2001/0003237 to Wolters et al.

The Johnson '113 patent discloses the claimed invention, as stated above, except for the conveying element being below the picking gap or gathering element, or both above and below the picking gap and gathering element. The Wolters '237 patent publication teaches that it is known in the art to provide a conveying element located both above (14) and below (16) the picking gap. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the gathering and picking device of the Johnson '113 patent with the above-and-below conveying element arrangement as taught by the Wolters '237 patent, in order to improve conveying function by providing additional conveying surfaces.

Art Unit: 3671

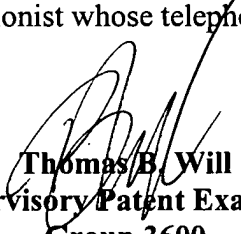
***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (703) 306-5959. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (703) 308-3870. The fax number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.



**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group 3600**

**NSM**  
**8/23/04**

**Nathan S. Mammen**